STATE OF MICHIGAN

COURT OF APPEALS

RICHARD ROBINSON, Plaintiff-Appellant/Cross-Appellee,	UNPUBLISHED May 1, 2014
v	No. 311266 Oakland Circuit Court
GURSTEN KOLTONOW GURSTEN CHRISTENSEN & RAITT, PC, Defendant-Appellee/Cross-Appellant.	LC No. 2011-122541-NM

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

In this suit for legal malpractice, plaintiff Richard Robinson appeals of right the trial court's order dismissing his claim against Gursten Koltonow Gursten Christensen & Raitt, P.C. (Gursten Koltonow) under MCR 2.116(C)(10). On appeal, Robinson argues, in relevant part, that the trial court failed to consider the evidence in the light most favorable to him and relied on inadmissible hearsay. On cross-appeal, Gursten Koltonow argues that the trial court erred when it determined that Robinson's claim was timely. We conclude that Robinson's claim was untimely under the undisputed facts of this case. For that reason, we affirm.

I. BASIC FACTS

In November 2007, Robinson was driving on I-696 in Southfield. He saw a mattress in the road and moved to the right lane to avoid it. A couple of minutes later, Leaton McRae struck Robinson with his semi. McRae worked for MC Schmitt Trucking under dispatch to Universal Am-Can Ltd. An officer ticketed McRae for failing to yield. Robinson allegedly suffered a closed head injury and other serious injuries.

Just days after this accident, Robinson hired Gursten Koltonow to sue McRae, Schmitt Trucking, and Universal. Robinson executed a contingent-fee agreement and met with a partner who allegedly told him that he had obtained $200,000 for similar claims. Gursten Koltonow filed suit in May 2008.

Robinson's case was evaluated in June 2009. The case evaluation panel determined that Robinson's clam had a value of $40,000. Robinson alleged that one of his lawyers told him that the assessed value was low as a result of the evidence that McRae was responding to a sudden emergency. In July 2009, Gursten Koltonow informed Robinson that facilitation was scheduled for September 11, 2009.

Former Judge Richard Kaufman presided over the facilitation. Robinson stated that his lawyer recommended that he settle his case. The lawyer believed that Robinson should settle for several reasons: Robinson would not, in his opinion, be likable to a jury, his current injuries were similar to his past injuries, and he returned to work after the accident to claim higher work loss benefits. The lawyer also thought that opposing counsel would use Robinson's driving record and two previous restraining orders against Robinson, and that the jury would likely not believe Robinson's emotional injury claims. Robinson did not agree and noted that his previous injuries had not included chronic headaches or treatment for psychiatric or anxiety disorders.

In his complaint, Robinson alleged that his lawyer refused to provide him with any legal representation at the facilitation; instead, he just moved his chair to a corner and refused to participate. As a result of the failure to offer any assistance, Robinson claims that he was forced to accept a settlement of $97,500. Robinson executed the settlement agreement on that same day, September 11, 2009.

The trial court entered an order dismissing Robinson's claims after the settlement on September 21, 2009. And, on September 30, 2009, Robinson executed a release and satisfaction.

On October 22, 2009, Gursten Koltonow wrote to Robinson detailing the firm's fees. Robinson met with one of his lawyers on that same day to review the fees and receive his share of the settlement. Robinson contested some of the fees, including a fee of $800 for a deposition that he argued did not occur. After Gursten Koltonow adjusted the fees, Robinson received $60,785 of the $97,500 settlement.

Robinson sued Gursten Koltonow on October 21, 2011. He alleged that the firm acted dishonestly and in bad faith and made judgments that were not in Robinson's best interests. He further claimed that Gursten Koltonow's lawyers were ill-informed regarding the law and the facts of his case, and knowingly and intentionally failed to act as lawyers of ordinary learning, skill, and judgment. He alleged that the firm took no depositions, violated the Rules of Professional Conduct, failed to timely file an expert witness list and coerced him to settle the case for an inadequate amount.

Gursten Koltonow moved for summary disposition in November 2011. It argued that the trial court should dismiss Robinson's claims as untimely under MCR 2.116(C)(7) or dismiss Robinson's claims under MCR 2.116(C)(10) because his claims were subject to the attorney judgment rule or because Robinson could not show that he would have received a higher settlement but for the negligent representation.

In opposition to the motion, Robinson submitted evidence that his lawyer advised him to reject the $40,000 case evaluation and apologized for not knowing the law. Robinson felt he would have been credible in front a jury and noted that the file that he received from Gursten Koltonow showed that Schmitt Trucking had $1 million in coverage. Robinson submitted an accountant's report assessing his lost compensation at $964,512. Robinson also submitted an affidavit by a former judge, Marvin Stempien, who serves as a case evaluator and facilitator. Stempien opined that, without Gursten Koltonow's negligent representation, Robinson's case would have settled for $250,000 or brought a jury verdict of $1 million.

In a written opinion, the trial court denied Gursten Koltonow's motion under MCR 2.116(C)(7) because the evidence showed that the firm's representation did not end until it distributed the proceeds from the settlement on October 22, 2009. However, the trial court agreed that Robinson's claims should be dismissed under MCR 2.116(C)(10). It determined that the undisputed evidence showed that Robinson was not coerced to accept the settlement and that there was enough time to reject the offer and obtain new counsel.

Robinson then moved for reconsideration, which motion the trial court denied. Robinson now appeals to this Court.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

We first consider Gursten Koltonow's argument that the trial court erred when the court denied Gursten Koltonow's motion for summary disposition under MCR 2.116(C)(7). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). "This Court also reviews de novo whether the trial court correctly selected, interpreted, and applied the relevant statutes." *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013).

B. THE PERIOD OF LIMITATIONS

A person cannot sue another to recover damages for an injury unless, after the claim accrues, the person sues within the period prescribed by statute. MCL 600.5805(1). The period of limitations for legal malpractice is two years from the date the claim accrued to the plaintiff. MCL 600.5805(6). A legal malpractice claim accrues at the time the legal professional "discontinues serving the plaintiff in a professional . . . capacity as to the matters out of which the claim for malpractice arose . . . ." MCL 600.5838(1).[1] Accordingly, in order to determine whether Robinson's claim was timely, we must first determine when Gursten Koltonow

[1] The Legislature amended the statute in 2012. See 2012 PA 582. However, those changes do not apply to this case. In addition, we note that the discovery rule provided under MCL 600.5838(2) does not apply under the facts of this case.

discontinued serving Robinson in a professional capacity on the matter out of which the claim for malpractice arose.

Courts have developed special rules for determining when a lawyer ceases to serve his or her client in a professional capacity. Thus, this Court has stated that a lawyer ceases to serve when the client or the trial court relieves the lawyer of the obligation to serve or when the lawyer's client retains a new lawyer. See *Kloian v Schwartz*, 272 Mich App 232, 237; 725 NW2d 671 (2006). It is not, however, necessary for a lawyer to receive or send a formal notice terminating the professional relationship in every case; where the client hired the lawyer to perform a specific legal service, the lawyer discontinues serving the client on the date that he or she last provided the client with a professional service on that matter. *Chapman v Sullivan*, 161 Mich App 558, 561-562; 411 NW2d 754 (1987).

Here, the undisputed evidence showed that Robinson hired Gursten Koltonow for a specific legal service: to litigate his claims arising from the November 2007 automobile accident. And, although there was no formal termination of Gursten Koltonow's representation, the undisputed evidence showed that the underlying litigation ended in settlement. Robinson attended the facilitation on September 11, 2009, and agreed to the settlement on that same day. Consistent with this settlement, the trial court entered an order dismissing Robinson's claim in the underlying litigation on September 21, 2009. Finally, Robinson executed a release and satisfaction concerning the underlying litigation on September 30, 2009.

The evidence shows that the last date that Gursten Koltonow represented Robinson or otherwise rendered a professional service for his benefit in the underlying litigation was September 30, 2009. See MCL 600.5838(1). Even assuming that Gursten Koltonow remained obligated to represent Robinson through the period within which he had an appeal of right, see *Kloian*, 272 Mich App at 238 n 2, Gursten Koltonow's last date of professional service in the underlying litigation would have been October 12, 2009. Robinson did not sue Gursten Koltonow for legal malpractice arising out of the underlying litigation until October 21, 2011, which is more than two years from the date that there is any evidence that Gursten Koltonow professionally served Robinson in the underlying litigation. MCL 600.5805(6).

Notwithstanding the evidence that the underlying litigation had formally ended with the trial court's dismissal of the underlying suit on September 21, 2009 and Robinson's execution of the release and satisfaction on September 30, 2009, the trial court determined that Gursten Koltonow did not cease providing Robinson with professional services arising from the underlying litigation until it distributed the proceeds of the settlement on October 22, 2009. As such, the trial court concluded that Robinson timely filed his suit on October 21, 2011. We do not agree that the distribution of settlement proceeds constitutes service by a lawyer in a "professional . . . capacity as to the matters out of which the claim for malpractice arose . . . ." MCL 600.5838(1). A lawyer has an obligation to safeguard and disburse his or her client's property without regard to the manner or timing of its acquisition. See, e.g., *Kasben v Hoffman*, 278 Mich App 466, 472-473; 751 NW2d 520 (2008). Indeed, it is quite possible for a lawyer to receive funds related to a particular litigation many years after the conclusion of legal representation. But we cannot conclude that the lawyer's safeguarding and distribution of those funds constitutes continued professional service arising from the matter to which the funds are related; rather, we conclude that such distributions are ministerial. See *Bauer v Ferriby &*

Houston, PC, 235 Mich App 536, 539; 599 NW2d 493 (1999) (recognizing that lawyers have numerous duties to their clients, which remain after the conclusion of a specific legal matter, but concluding that it would be contrary to public policy to hold that those duties and any concomitant follow-up activities extend the accrual date). The evidence showed that Gursten Koltonow's representation in the underlying matter formally ended at the latest on October 12, 2009. The fact that Robinson disputed the accuracy of Gursten Koltonow's calculation of its fee and that Gursten Koltonow did not distribute the balance of the settlement proceeds until October 22, 2009, did not extend the accrual date beyond October 12, 2009.

III. CONCLUSION

The trial court erred when it concluded that Robinson had until October 22, 2011 to file his claim for legal malpractice. Given the undisputed facts, the trial court should have dismissed Robinson's claim as untimely under MCR 2.116(C)(7). See *Kincaid*, 300 Mich App at 522-523. Because this Court will affirm a trial court's decision when it comes to the correct result, even if for the wrong reason, see *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009), we need not address the trial court's decision to dismiss Robinson's claim under MCR 2.116(C)(10).

There was no error warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood